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**ASIE/2004/3252**

# **EU-China Social Security Reform Co-operation Project for The People's Republic of China**

***DETERMINING INVALIDITY AND DISABILITY FOR BENEFIT PURPOSES: BASIC PRINCIPLES AND THEIR APPLICATION IN EU MEMBER STATES***

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A Co-operation Project jointly funded and undertaken by the People's Republic of China and the European Union

The legislative provisions of different states in relation to invalidity and disability benefits specify whether a person satisfies the entitlement criteria in one of four ways (or some combination of them). One or more of these ways applies whether or not the condition for entitlement assumes total or partial incapacity and, if the latter, whether there is a threshold to be satisfied before entitlement arises. The four ways of determining invalidity or disability are the following:

- 1) (Total or partial) incapacity for work
- 2) (Total or partial) loss of earning capacity
- 3) Loss of function
- 4) Additional costs due to disability.

### ***Incapacity for work***

The criterion for determining whether or not a person is disabled under this heading is whether or not he or she is unable to work. The condition for entitlement may be whether the person can do no work at all (or can perform only a minimal amount of work, in some cases possibly only where it is performed for therapeutic reasons). In other cases entitlement may arise where the individual is able to perform some work, but less than he or she could perform before the invalidity or disability occurred. The entitlement will then be at a reduced rate from the entitlement that arises from total incapacity, but there may be a threshold below which no benefit is payable. The reduction may be on the same ratio as the percentage extent of incapacity, but may be determined according to a different statutory percentage.

The question arises as to the basis on which the incapacity is determined. It may be determined on any of the following bases:

- Incapacity for performing the claimant's previous job. This means that benefit may be payable even though the claimant may be well able to perform some other job for the same or a different employer. His earning capacity may or may not be reduced as a result.
- Incapacity for performing any job for the employer for whom the claimant was working at the time that the incapacity occurred. This would mean that if the employer could find a lighter, possibly lower paid, job that the claimant could perform, he would be ineligible for benefit. The effect is likely to be that those working for large employers are less likely to acquire entitlement as large employers are likely to be able to find suitable lighter jobs, but those working for small employers are more likely to qualify for benefit as there would be no suitable alternative employment.
- Incapacity for performing a job of a comparable standard. This would mean that the individual would obtain entitlement if no other employer could provide him with a suitable employment and as a result he would find himself having to perform, possibly part-time, work of a far lower standard, which he was able to perform.
- Incapacity for performing any work. On this basis an individual would not qualify for benefit if there was any work that he could reasonably perform. Thus, for instance, a heavy labourer in the construction industry who suffered from severe back pain, would not qualify if he

was able to perform a sedentary job. The fact that someone actually does work, even though it would not be reasonable to expect him to do so, eg a paraplegic who edited a magazine, would be treated on this basis as capable of work, while actually working, but incapable when not working.

In each of the above cases the criterion is whether the person is actually incapable of work, as so defined, not whether the person is able to obtain work. When there is a high level of unemployment either generally or in the unskilled sector, it may be difficult for partially disabled individuals to obtain employment, as employers are likely to select fully fit workers in preference to disabled workers, unless there is a statutory quota for disabled workers. However, to judge a person's incapacity by ability to obtain work would lead to different criteria for entitlement depending on the state of the labour market and could lead to the same person being entitled at a period of high unemployment, but for the entitlement to be withdrawn when the unemployment level drops. Accordingly, it may be necessary to treat such partially disabled persons as unemployed, rather than invalid, where their capability falls below the threshold for entitlement.

An alternative method of determining incapacity is by looking not at the extent of the individual's incapacity, but at the extent of his capacity for work. In particular following rehabilitation and training, the issue would be what work can the claimant do, rather than what can he not do? On that basis the objective is to enable him to obtain work that he is capable of performing, rather than looking to identify what work he is no longer able to perform.

The basis for calculating the benefit for total incapacity, with proportionate reduction, where applicable, for partial incapacity, may be determined on one of the following alternatives. These are

- i) a flat rate amount determined statutorily.
- ii) contributions and/or earnings paid during the past 12 months or previous calendar year.
- iii) contributions paid (or earnings on which they were paid) throughout the claimant's lifetime until the onset of the disability.
- iv) contributions paid until the onset of the disability, plus notional contributions for the period from the onset of the disability until the claimant attains pension age.

The entitlement under any of the above alternatives, including the flat rate basis, may be reduced in some countries if the claimant has a contribution deficiency.

In some countries the amount of the entitlement is increased to take account of members of the claimant's family.

In the Czech Republic account is taken of the claimant's invalidity with the benefit determined on a flat rate with increases subject to periods of insurance. Denmark has a system based on incapacity, but this subject to an income ceiling. Germany, where the benefit is calculated on a points system,

bases entitlement on the capacity for work. France, Italy, United Kingdom, Greece and Spain determine entitlement on the basis of incapacity.

### ***Loss of earning capacity***

For an invalidity or disability benefit to be determined on the basis of loss of earning capacity, the amount of the benefit payable is the difference between the claimant's earning capacity before the disability and afterwards. There may be a minimum and/or maximum level of benefit payable. Although the difference is normally calculated on the difference between the salary or wage that the claimant actually received before the disability and the amount, if any, that he receives after the disability in a new job with a different employer or in a lighter job with the same employer following the onset of the disability, this is not always possible, nor is it always accurate and may act as a disincentive to the claimant obtaining suitable employment for which he is capable. A claimant may have been unemployed before becoming disabled – accordingly the pre-disability earnings may have to be determined either on a notional basis or on the basis of the claimant's earnings some time before. Similarly there may be difficulties in realistically assessing the claimant's post-disability earnings. He may be unemployed and thus it is difficult to identify what he would earn if he were working. Alternatively, he may have taken employment at a lower level than that of which he is capable, with the difference met from disability insurance benefit. There is no incentive for him to obtain a job commensurate with his capabilities as to do so could reduce the level of his benefit.

A further difficulty in basing disability benefit on loss of earnings relates to changes in earnings patterns following the award of benefit. Is the rate at the time of the award to continue indefinitely, irrespective of the claimant's subsequent earnings, eg following promotion in his new employment or an annual inflation-linked pay rise? If his earnings increase, should the benefit be adjusted downwards or should a comparison be made with any earnings increase that he would have received, had he been able to remain in his former employment? What should happen if the differentials between his former and his current job narrow or widen because of labour market conditions? Unless the initial award is to remain unaltered, or is simply subject to indexation in line with wage or price inflation, to base disability insurance benefit on loss of earnings and the difference between the pre- and post-disablement earnings, the amount of benefit needs to be re-assessed at regular intervals to avoid the situation under which a beneficiary who attains a higher post-disability salary following training and advancement in a skill-shortage occupation is still able to obtain a disability pension on the grounds of loss of earnings.

Invalidity benefit is determined on the basis of loss of earnings in Belgium and the Netherlands. In Belgium the benefit is increased to take account of the claimant's dependants.

### ***Loss of function***

Disability insurance benefit on the basis of loss of function operates on a basis of a statutory fixed tariff for the loss of one or more body parts, eg a finger or an eye, or loss of a functional capacity eg loss of hearing. The tariff is likely to take account of the loss of two organs at a rate higher than double the rate of the loss of one, eg the blindness caused by the loss of both eyes, or deafness caused by the loss of hearing in both ears, has a far greater effect than the loss of two single eyes. The tariff may, or will, be adjusted when someone with one loss of function has that condition aggregated or subsequently suffers from the loss of another function.

The problem with using loss of function as the basis for disability insurance benefit is that the loss of function may have an entirely different effect on the earning capacity of different people. The loss of the three fingers on one hand may have no effect whatever on the employment activity of one person who does not need to use hands in his job, but may totally prevent someone else from doing his job if it requires manual dexterity. For this reason, there may be a supplementary benefit based on loss of earnings to compensate those people for whom loss of function has a disproportionately detrimental effect.

The United Kingdom determines benefit following an industrial accident or occupational disease on the basis of loss of function.

### ***Additional costs due to disability***

The disability benefit rate may take account of the additional costs caused by a person's disability. This may be provided as a supplement to a benefit calculated on one of the bases described above, may result in a higher rate of benefit being given, or may be provided as a separate benefit. The principal reasons for such a benefit to be provided are firstly additional mobility costs, eg for amputees, and secondly care costs for those who need the assistance of others in connection with the daily bodily functions, eg for washing, feeding or getting into or out of bed. The benefit may be at a flat rate or may be adjusted according to the extent of the person's disability or the costs incurred. The care component may be paid to the disabled person or to the carer or a combination to both.

Benefit due to additional costs may be payable only when the recipient is unable to work, or may be paid when he is able to undertake full-time or part-time work. For instance, a person with severe mobility problems may be able to work, but could not afford to get to work without additional assistance with mobility costs. The benefit may be paid either as a periodic cash amount or may be diverted to provide a benefit in kind, eg by the provision of an adapted car or motorised wheel chair.

Sweden provides a supplement to the disability insurance benefit to take account of the requirement for a carer. The United Kingdom has a separate benefit for care and mobility requirements.

### ***Periodic payment or lump sum gratuity***

Although disability insurance benefit is generally paid in the form of a periodic pension, some countries make provision for a single lump sum payment if the degree of incapacity or loss of function is less than a percentage or amount that gives entitlement to a periodic pension. However, a problem with paying a lump sum may arise if the disabling condition is exacerbated to the level that justifies a periodic pension. If so, is the pension reduced to take account of the lump sum that has already been paid or should a further lump sum be paid if the additional exacerbating condition is by itself insufficient to justify a pension? Similarly, if initially the disabling condition is insufficient to justify either a pension or lump sum, does a payment become due if the exacerbating condition brings the individual above the threshold? In practice, the effect of the respective conditions is likely to be aggregated, but with account taken of any previous award.

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May 2006